

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFERY HALL,

Plaintiff,

v.

CASE NO. 08-CV-13498

DISTRICT JUDGE DENISE PAGE HOOD
MAGISTRATE JUDGE CHARLES BINDER

KHAWAJA IKRAM, Doctor,
PANDYA, Doctor,¹
STEVEN McLAIN,

Defendants.

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
ON DEFENDANT McLAIN'S MOTION TO DISMISS BASED ON FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES**

(Doc. 17)

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that Defendant McLain's Motion to Dismiss be **GRANTED**.

II. REPORT

Plaintiff Jeffrey Hall is a state prisoner who is currently incarcerated at the Ryan Correctional Facility in Detroit, Michigan. On August 13, 2008, Plaintiff filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging that his Eighth Amendment right to not have his serious medical needs treated with deliberate indifference was violated while he was housed at the Parnall Correctional Facility in Jackson, Michigan, in November of 2007. (Amended Compl., Doc. 12.)

¹Defendant Pandya was terminated on January 20, 2009. (Doc. 11.)

On September 26, 2008, U.S. District Judge Denise Page Hood referred all pretrial matters to the undersigned magistrate judge. (Doc. 4.) Prior to the Order of Reference, on June 16, 2009, Defendant McLain filed a motion to dismiss based on failure to exhaust administrative remedies. (Doc. 17.) A Notice requesting response was entered on June 19, 2009. Plaintiff filed a Request for Abeyance on July 21, 2009, asking that the case be delayed until his projected parole date of August 24, 2009. (Doc. 21.) Plaintiff also filed a Request to dismiss all remedies concerning Mr. McLain on August 17, 2009, conceding that he failed to exhaust remedies. (Doc. 23.) Upon review of the documents, I conclude that pursuant to E.D. Mich. LR 7.1(e)(2), this motion is ready for Report and Recommendation on the pleadings without oral argument.

Plaintiff's response states that he "never filed any grievances on Mr. McLain" and that he has "no other alternative but to ask the court to dismiss all remedies concerning Mr. McLain along with my deepest apology for any inconvenience that the legal writer has put on the Honorable Judge, the court and Mr. McLain." (Doc. 23.) Based on this concession, and Defendant McLain's evidence of failure to exhaust (Doc. 17 at 9-10, Exs. A and B), I suggest that Defendant McLain's motion be granted and the case be dismissed without prejudice as to Defendant McLain.

III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections

a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ *Charles E. Binder*

CHARLES E. BINDER
United States Magistrate Judge

Dated: October 14, 2009

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, served upon counsel of record via the Court's ECF System and was mailed by the U.S. Postal Service to the following non-ECF participant: Jeffrey Hall #139626 by First-Class Mail at the Ryan Correctional Facility, 17600 Ryan Road, Detroit, MI 48212-1155.

Date: October 14, 2009

By s/Patricia T. Morris
Law Clerk to Magistrate Judge Binder